HON'BLE THE CHIEF JUSTICE SRI G.S. SINGHVI

AND

HON'BLE SRI JUSTICE R. SUBHASH REDDY

Writ Appeals No.1170, 1431, 1675, 2150, 2381, 2523 and 2561 of 2005, 424 and 425 of 2006

Writ Appeal No.1170 of 2005

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

The Mahalakshmi Devi Education Society

Represented by its Secretary

Sri A. Sridhar Lakshman Devarakonda,

Nalgonda District and another.

… Respondents

Writ Appeal No.1431 of 2005

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

Islamic Educational & Cultural Society, Markapur,

Prakasam District represented by its

President and Correspondent,

Mr.Mirza Shamsher Ali Baig and others.

… Respondents

Writ Appeal No.1675 of 2005

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

Vishnu Educational Society represented by

Its Secretary and Correspondent,

Sri Ch. Raju and another

… Respondents

Writ Appeal No.2150 of 2005

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

Sri Venkateswara Educational & Research Society

Represented by its Correspondent,

Dr. P. Someswara Rao and another

… Respondents

Writ Appeal No.2381 of 2005

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

Kavitha Memorial Educational Society

Represented by its Correspondent/Secretary

and another.

… Respondents

Writ Appeal No.2523 of 2005

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

Janke Rami Reddi Memorial Educational Society,

Represented by its Secretary/Correspondent,

Sri Venna Hanuma Reddy and another.

… Respondents

Writ Appeal No.2561 of 2005

Between:

The State of Andhra Pradesh

Represented by its Secretary to Government,

School Education Department,Secretariat

Buildings, Hyderabad and another … Appellants

And

Hird Junior College High School, Narasaraopet

Represented by its Correspondent.

… Respondent

Writ Appeal No.424 of 2006

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

M/s.Asifia Educational Society and others

… Respondents

Writ Appeal No.425 of 2006

Between:

The Government of Andhra Pradesh

Represented by its Principal Secretary to

Government, School Education Department,

Secretariat Buildings and another … Appellants

And

Kuppam Educational Society represented

By its Chairman, B.C. Naga Raju

and another.

… Respondents

::JUDGMENT::

Counsel for appellants: Government Pleader for School Education.

Counsel for the respondents: Sri T. Anantha Babu, Senior Advocate and

Sarvasri A. Veera Swamy,

S. Niranjan Reddy,

J. Kanakaiah,

V. Kishore,

Ch.Samson Babu,

T. Niranjan Reddy

B. Adinarayana Rao

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April , 2006

Per G.S. Singhvi, CJ

These appeals are directed against the orders passed by the learned Single Judges in different writ petitions whereby they quashed Memo No.1675/Trg-I/2004 dated 12-6-2004 issued by the State Government (appellant No.1 herein) and consequential proceedings in Rc.No.2490/N2-2/2004-8 dated 22-6-2004 issued by Commissioner and Director of School Education, Saifabad, Hyderabad (appellant No.2 herein) canceling notification dated 1-12-2003 and directed the appellants to consider the applications filed by the writ petitioners for grant of 'No Objection Certificate' (NOC) for establishing B.Ed. colleges.

For the sake of convenience, we have noted the facts from Writ Appeal No.1170 of 2005.

Respondent No.1 – The Mahalakshmi Devi Education Society is a society registered under the Societies Registration Act, 1860. It established a B.Ed. college for women at Rajahmundry in 1979. In response to notification dated
1-12-2003 issued by appellant No.2 for starting new B.Ed. colleges in seven villages of Chittoor, Prakasam, Warangal, Adilabad, Nalgonda and Nizamabad Districts, respondent No.1 applied for grant of NOC to establish B.Ed. college in the backward area of Devarakonda of Nalgonda District. Along with the application, respondent No.1 deposited the fee prescribed for processing the application and inspection. Respondent No.1 also purchased land measuring Ac.5-00 and deposited Rs.5 lakhs

in fixed deposit towards corpus fund. On 23-12-2003, a team of officers of the State Council for Education, Research and Training (SCERT) conducted physical verification of the preparations made by respondent No.1. The officers concerned are said to have felt satisfied that respondent No.1 had made all arrangements necessary for starting B.Ed. college at Devarakonda. The building plan submitted by respondent No.1 was approved by Devarakonda Gram Panchayat on 6-4-2004. Notwithstanding this, the concerned authorities of the Education Department did not issue the required NOC. Therefore, respondent No.1 filed writ petition under Article 226 of the Constitution of India and prayed for issuance of a writ in the nature of mandamus to the non-petitioners to issue the required NOC and permission to establish B.Ed. college.

In the affidavit filed in support of the writ petition, it was averred that failure of the non-petitioners (appellants herein) to issue NOC has resulted in denial of the petitioner's legitimate right to establish B.Ed. college in the backward area of Nalgonda District. It was further averred that after having induced the writ petitioner to purchase land and take other steps necessary for establishing B.Ed. college, the non-petitioners cannot withhold NOC.

During the pendency of the writ petition, appellant No.1 issued Memo dated 12-6-2004 and declared that there was no need to establish new B.Ed. colleges. Thereafter, appellant No.2 issued proceedings dated 22-6-2004 for cancellation of notification dated 1-12-2003. On coming to know of this development, the writ petitioner (respondent No.1) filed additional affidavit dated 5-7-2004 wherein it challenged the legality of Government Memo dated 12-6-2004 and proceedings dated 22-6-2004 issued by appellant No.2.

In the counter-affidavit filed by Smt.P.B.T. Sundari, Deputy Director (Training) in the office of non-petitioner No.2 (appellant No.2 herein), it was averred that in response to notification dated 1-12-2003 issued by the department, 46 applications were received for establishing B.Ed. colleges. It was further averred that process for physical verification had been completed, but when criteria evolved by State Level Standing Committee (SLSC) for deciding the competing claims of the applicants was forwarded to the government, it was decided to cancel notification dated 1-12-2003 and to undertake review of the need for more B.Ed. colleges.

Thereafter, an additional affidavit dated 14-4-2005 was filed on behalf of the writ

petitioner (respondent No.1 herein) reiterating its prayer for grant of NOC. In reply, an additional counter-affidavit was filed on behalf of the non-petitioners. In paragraphs 6 to 11 of that affidavit, it was averred as under:

> "6. It is submitted that in view of the orders of the Government, a Committee has been constituted to take up a comprehensive review and to assess the need for establishment of Training Colleges under private sector for Primary, Secondary, Physical Education, M.Ed., Pandit Training and Pre-Primary Training Institutions in the State. The Committee has submitted a report after discussing various parameters in assessing the need for additional requirement of School Assistants and Secondary Grade Teachers as per the orders issued in G.O.Ms.No.39, Edn. (Ser.V) Dept., dated 03-05-2002 wherein the teaching staff pattern worked out for schools.
>
> Apart from the above, while assessing the need, the following aspects were also taken into consideration:
>
> i. The children enrolled in Residential Bridge Courses and non-residential bridge courses,
>
> ii. Out of school children,
>
> iii. Staffing pattern of Residential Schools,
>
> iv. Staffing pattern of ITDA Ashram Schools,
>
> v. Growth rate of schools due to migration, population increase in certain specified areas, new colonies coming up etc.
>
> The Committee has worked out the staffing pattern, enrolment-range wise of Upper Primary Schools and High Schools, probable growth of institutions and teachers from 2004-05 to 2013-14. The Committee has also taken into consideration the natural attrition rate projecting as 3% and attrition due to promotion, deployment and deputation as 0.5% based on the number of vacancies arisen every year.
>
> 7. It is submitted that after taking into consideration all the above aspects, the Committee has assessed the future requirement of teachers from 2004-05 to 2013-2014 approximately as 16,000 teachers and suggested that there is no need for establishment of any more B.Ed. Colleges or D.Ed. Colleges or need for enhancement of intake in the existing B.Ed. Colleges as the existing 304 B.Ed. colleges with an intake of 33,903 will cater to the future requirement of teachers upto 2013-2014.
>
> 8. It is respectfully submitted that the report is worked out on scientific lines, taking into account the staffing pattern and growth rate of schools, out of school children and requirement of monitoring system and forwarded the report to the Committee for taking necessary action.

9. It is submitted that after careful examination of the matter, Government have issued orders in G.O.Ms.No.49, Edn., dated 04-03-2005 stating that no permission should be issued for opening of fresh Telugu Medium B.Ed. Colleges and D.Ed. colleges as the existing intake in Telugu Medium B.Ed. colleges will cater to the needs of Teachers in Primary and High Schools and also in view of the large number of Telugu Medium B.Ed. candidates being available in the State.

10. It is respectfully submitted that though the medium of instruction in B.Ed. Colleges is English only, the students are permitted to write the B.Ed. examination either in Telugu, Urdu or Hindi etc. also. The ground reality is that in most of the colleges, the students are opting to write the examination in Telugu only especially more so in the case of students with the rural educational background. As such, the Government have imposed a ban for the establishment of Telugu Medium B.Ed. Colleges i.e., prohibiting the opening of any more B.Ed. colleges where the students are given option of answering the examination in Telugu.

11. It is respectfully submitted that in view of the above position, Government have issued orders vide G.O.Ms.No.47 Edn dated 28-2-2005 for setting of exclusive English Medium B.Ed. Colleges in the State @ 2 per district with a view to meeting the growing requirement of providing quality teachers in English Medium and decided to permit the same under private sector, so that the trained candidates will have placement opportunities in the State of Andhra Pradesh, in other States and also in other developing countries and requested the Director of School Education, Director, SCERT, Hyderabad and Secretary, APSCHE, Hyderabad to formulate necessary guidelines for setting up exclusive B.Ed. colleges in English Medium. The guidelines were not yet finalized. Separate guidelines will have to be framed for establishment of English Medium B.Ed. Colleges apart from the guidelines issued in G.O.Ms.No.398 Edn dated 4-12-1997."

On a consideration of the pleadings of the parties and arguments of their counsel, the learned Single Judge allowed the writ petition and quashed Memo dated 12-6-2004, as also proceedings dated 22-6-2004 and directed National Council for Teacher Education (for short 'NCTE') to consider the application of the petitioner for grant of recognition and decide the same keeping in view the judgment of the Supreme Court in **St. Johns Teachers Training Institute v. Regional Director, NCTE**. The learned Single Judge observed that the decision contained in Memo dated 12-6-2004 appears to be politically motivated and, therefore, the same is liable to be quashed.

The writ petitions filed by Islamic Educational and Cultural Society, Markapur, Vishnu Educational Society, Sri Venkateswara Educational and Research Society, Kavitha Memorial Educational Society, Janke Rami Reddi Memorial Educational Society, Hird Junior College High School, Narsaraopet, M/s.Asifia Educational Society and others and Kuppam Educational Society for issuance of direction to the respondents to grant NOC were likewise allowed by the learned Single Judges.

The appellants have questioned the orders of the learned Single Judge primarily on the ground that in exercise of the power vested in it under Article 226 of the Constitution, the High Court cannot interfere with the policy decision taken by the State Government to withdraw notification dated
1-12-2003. They have also pleaded that the learned Single Judges committed a grave error by attributing political motives to the decision contained in Memo dated 12-6-2004. According to the appellants, the change of party in power did not have any bearing on the decision which was taken with a view to undertake a comprehensive review of the need to establish new B.Ed. colleges.

Before proceeding further, we deem it proper to take notice of some events, which took place before decision of the writ petition filed by the Mahalaxmi Educational Society as also the developments which have taken place after the decision.

Pre-decision events:

17-9-2004 Respondent No.1 submitted application to the Southern Regional Committee of NCTE at Bangalore for grant of recognition for starting B.Ed. college at Devarakonda. A sum of Rs.40,000/- was also deposited as inspection fee.

28-2-2005 The State Government issued G.O.Ms.No.47 for opening two B.Ed. colleges of English medium in every district.

4-3-2005 The State Government issued G.O.Ms.No.49 and declared that no permission will be granted for opening fresh Telugu medium B.Ed. colleges.

15-3-2005 Respondent No.1 sent remainder to Southern Regional Committee of NCTE for grant of recognition.

Post-decision developments:

16-5-2005 Southern Regional Committee of NCTE informed respondent No.1 that team of experts will visit on 21-5-2005 for the purpose of

inspection.

21-5-2005 Prof.Vasantha Kumar, Karnataka and Prof. Andrew of Kerala inspected the college of respondent No.1 and facilities.

5-7-2005 The Southern Regional Committee of NCTE granted recognition entitling respondent No.1 to start B.Ed. college from the academic year 2004-05 with an annual intake of 100 students.

9-7-2005 A team constituted by Osmania University visited the college at Devarakonda and submitted report with favourable recommendation for grant of affiliation.

11-7-2005 Osmania University granted provisional affiliation to the new B.Ed. college.

12-7-2005 By an order passed in WPMP No.18902 of 2005 in Writ Petition No.14884 of 2005, this Court directed Convenor, EDCET 2004-05 to allot students to the college established by respondent No.1. The latter allotted the required number of students and 97 of whom were admitted to the B.Ed. course for 2004-05.

22-9-2005 Osmania University allotted College Code No.102 for B.Ed. course.

18-10-2005 A.P. State Council of Higher Education approved the list of the candidates admitted by the management of the college against 15% quota.

22-10-2005 The Registrar, Osmania University, vide proceeding No.1833/H-B.Ed/04-05/ Acad /IV-2, approved the teaching staff members of the college for the academic year 2004-05.

23-11-2005 Convenor, EDCET 2004, vide proceedings No.3315/A1/Ed.CET/2004 approved the list of candidates admitted for the academic year 2004-05.

19-12-2005 Southern Regional Committee of NCTE, Bangalore granted recognition to the college for the academic year 2005-06.

Learned Government Pleader argued that the decision to cancel notification dated 1-12-2003 was taken because the same was not preceded by an assessment of the need of trained teachers in different disciplines. He submitted that with a view to undertake a comprehensive exercise for determination of the need of trained teachers, the government decided to cancel notification dated 1-12-2003. He further submitted that the State Government has the exclusive prerogative to determine the

need for B.Ed. colleges in the particular areas and decision taken in such matters is beyond the pale of challenge. Learned Government Pleader then argued that the decision to cancel notification dated 1-12-2003 was taken because a large number of surplus trained teachers are available in Telugu medium and there was enormous pressure on the government to provide employment to them without any tangible requirement. He submitted that after undertaking comprehensive review of the requirement of trained teachers, the government has decided that there is no need to establish Telugu medium B.Ed. colleges, but there is a dire need of English medium B.Ed. colleges. Therefore, vide G.O.Ms.No.47 dated 28-2-2005, permission has been granted for setting up two exclusive English medium B.Ed. colleges in each district. He then argued that observations made by the learned Single Judge suggesting that the decision contained in Memo dated 12-6-2004 was politically motivated are not supported by the material brought on the record of the writ petition filed by respondent No.1 and, therefore, the same should be set aside.

Sri T. Anantha Babu, Senior Advocate and other learned counsel appearing for contesting respondents supported the orders of the learned Single Judges and argued that the direction given by them for consideration of the applications of their clients for establishing B.Ed. colleges do not suffer from any legal infirmity warranting interference. Sri T. Anantha Babu highlighted the fact that The Mahalakshmi Devi Education Society (respondent No.1 in Writ Appeal No.1170 of 2005) has already been granted permission by NCTE to establish B.Ed. college at Devarakonda, Nalgonda District and the college has been functioning for last more than one year and the same stands affiliated with Osmania University. He emphasized that notification dated 1-12-2003 had been issued by the competent authority after assessing the requirement of new B.Ed. colleges in the backward areas of the State and cancellation thereof is vitiated by arbitrariness and mala fides. Learned counsel argued that Memo dated 12-6-2004 was issued without undertaking a fresh review of the need for establishing B.Ed. colleges and, therefore, the inference drawn by the learned Single Judge that the same was politically motivated cannot be faulted. In support of their arguments, learned counsel for the respondents relied on the judgments of the Supreme Court in **Thirumuruga Kirupananda Variyar Thavathiru Sundara Swamigal Medical Educational & Charitable Trust v. State of T.N.**, **Jaya Gokul Educational Trust v. Commr. & Secy. To Govt. Higher Education Department**, **St. Johns Teachers Training Institute v. Regional Director, NCTE** (1 supra), **Govt. of A.P. v. J.B. Educational**

Society and of this Court in **Self-Financing Rural Engineering College Managements Association v. All India Council for Technical Education**.

We have thoughtfully considered the entire matter. By virtue of the power vested in it under Entry 66 of List I of the VII Schedule read with Article 246 of the Constitution of India, the Parliament enacted National Council for Teacher Education Act, 1993 (hereinafter referred to as 'the Central Act'). Section 2 (c) of that Act defines the term 'Council' as the National Council for Teacher Education established under Section 3 (1). Section 2 (i) defines the term 'recognised institution' as an institution recognized by the Council under Section 14. Section 2 (l) defines the expression 'teacher education' to mean programmes of education, research or training of persons for equipping them to teach at pre-primary, primary, secondary and senior secondary stages in schools, and includes non-formal education, part-time education, adult education and correspondence education. Section 3 empowers the Central Government to establish a Council to be called 'the National Council for Teacher Education' (for short 'the Council'). Section 12 enumerates the functions of the Council. Section 14 provides for recognition of institutions offering course or training in teacher education. Section 31 empowers the Central Government to make rules to carry out the provisions of the Act. Section 32 empowers the Council to make regulations not inconsistent with the provisions of the Act and the rules made thereunder. For the sake of convenient reference, Sections 12, 14 and 32 (1), (2) (c), (d) (iii), (e) and (p) which have bearing on the decision of these appeals read as under:

> "**12 Functions of the Council** –
>
> It shall be the duty of the Council to take all such steps as it may think fit for ensuring planned and co-ordinated development of teacher education and for the determination and maintenance of standards for teacher education and for the purposes of erforming its functions under this Act, the Council may-
>
> a. undertake surveys and studies relating to various aspects of teacher education and publish the result thereof;
>
> b. make recommendations to the Central and State Governments, Universities, University Grants Commission and recognised institutions in the matter of preparation of suitable plans and programmes in the field of teacher education;

c. co-ordinate and monitor teacher education and its development in the country;

d. lay down guidelines in respect of minimum qualifications for a person to be employed as a teacher in schools or in recognised institutions;

e. lay down norms for any specified category of courses or trainings in teacher education, including the minimum eligibility criteria for admission thereof, and the method of selection of candidates, duration of the course, course contents and mode of curriculum;

f. lay down guidelines for compliance by recognised institutions, for starting new courses or training, and for providing physical and instructional facilities, staffing pattern and staff qualifications;

g. lay down standards in respect of examinations leading to teacher education qualifications, criteria for admission to such examinations and schemes of courses of training;

h. lay down guidelines regarding tuition fees and other fees chargeable by recognised institutions;

i. promote and conduct innovation and research in various areas of teacher education and disseminate the results thereof;

j. examine and review periodically the implementation of the norms, guidelines and standards laid down by the Council, and to suitably advise the recognised institutions;

k. evolve suitable performance appraisal systems, norms and mechanisms for enforcing accountability on recognised institutions;

l. formulate schemes for various levels of teacher education and identify recognised institutions and set up new institutions for teacher development programmes;

m. take all necessary steps to prevent commercialisation of teacher education; and

n. perform such other functions as may be entrusted to it by the Central Government.

14 Recognition of institutions offering course or training in teacher education -

1. Every institution offering or intending to offer a course or training in teacher education on or after the appointed day may, for grant of recognition under this Act, make art application to the

Regional Committee concerned in such form and in such manner as may be determined by regulations; Provided that an institution offering a course or training in teacher education immediately before the appointed day, shall be entitled to continue such course or training for a period of six months, if it has made an application for recognition within the said period and until the disposal of the application by the Regional Committee.

2. The fee to be paid along with the application under sub-section (1) shall be such as may be prescribed.

3. On receipt of an application by the Regional Committee from any institution under sub-section (1), and after obtaining from the institution concerned such other particulars as it may consider necessary, it shall,-

a. if it is satisfied that such institution has adequate financial resources, accommodation, library, qualified staff, laboratory and that it fulfils such other conditions required for proper functioning of the institution for a course or training in teacher education, as may be determined by regulations, pass an order granting recognition to such institution, subject to such conditions as may be determined by regulations; or

b. if it is of the opinion that such institution does not fulfill the requirements laid down in sub-clause (a), pass an order refusing recognition to such institution for reasons to be recorded in writing; Provider that before passing an order under sub-clause (b), the Regional Committee shall provide a reasonable opportunity to the concerned institution for making a written representation.

4. Every order granting or refusing recognition to an institution for a course or training in teacher education under sub-section (3) shall be published in the Official Gazette and communicated in writing for appropriate action to such institution and to the concerned examining body, the local authority or the State Government and the Central Government.

5. Every institution, in respect of which recognition has been refused, shall discontinue the course or training in teacher education from the end of the academic session next following the date of receipt of the order refusing recognition passed under clause (b) of sub-section (3).

6. Every examining body shall, on receipt of the order under sub-section (4),-

a. grant affiliation to the institution, where recognition has been granted

b. cancel the affiliation of the institution, where recognition has been refused.

32 Power to make regulations -

1. The Council may, by notification in the Official Gazette, make regulations not inconsistent with the provisions of this Act and the rules made thereunder, generally to carry out the provisions of this Act.

2. In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely :-

…

(c) the appointment and terms and conditions of service of officers and other employees of the Council under sub-sections (1) and (2) respectively of section 19;

(d) the norms, guidelines and standards in respect of-

…

(iii) starting of new courses or training in recognised institutions under clause (f) of section 12;

…

(e) the form and the manner in which an application for recognition is to be submitted under sub-section (1) of section 14;

…

(p) any other matter in respect of which provision is to be, or may be, made by regulations."

In exercise of the powers vested in it under Section 32, the Council has, from time to time, framed regulations on various matters specified in Sub-section (2) of that section. The regulations which are relevant for our purpose are the NCTE (Form of Application for Recognition, the Time of Submission of Application, Determination of Norms and Standards for Recognition of Teacher Education Programmes and Permission to Start New Course or Training) Regulations, 2002 (for short 'the Regulations'). Regulation 6 of these Regulations read as under:

> "**6. Requirement of no-objection certificate from the State Government/UT Administration.—**(*i*) Application from every institution seeking recognition to start a course or training in teacher education or from an existing institution seeking permission to start a new course or training and/or increase in intake shall be accompanied by a no-objection certificate (NOC) from the State or Union Territory in which the institution is located.
>
> (*ii*) The endorsement of the State Government/UT Administration in regard to issue of no-objection certificate (NOC) will be considered by the Regional Committee while taking a decision on the application for recognition.
>
> (*iii*) If NOC issued by the State Government/UT Administration does not indicate the intake, it will be for the Regional Committee to determine the intake taking into account the infrastructural and instructional facilities available in the institution and other relevant provisions in the norms and standards applicable to the relevant teacher training programme.
>
> (*iv*) NOC issued by the State Government/UT Administration will remain valid till such time the State Government/UT Administration withdraws/cancels it.
>
> (*v*) NOC will be deemed to have lapsed if the institution fails to get recognition within three years from the date of its issue.
>
> (*vi*) Requirement of NOC shall not apply to government institutions.
>
> (*vii*) Requirement for NOC shall not apply to university department for taking up innovative teacher education programme for a maximum intake of 50 (fifty only). The question as to whether a programme is innovative will be decided by the Regional Committee concerned."

The Legislature of Andhra Pradesh has, in exercise of the power under Entry 25 of List III of the VII Schedule, enacted the Andhra Pradesh Education Act, 1982 (hereinafter referred to as 'the State Act'). The object of this Act is to reform, organize and develop educational system in the State and to provide for matters connected therewith or incidental thereto. Under Section 19 of the State Act, educational

institutions are classified into three categories, namely, State institutions, local authority institutions and private institutions. Section 20 of the State Act which provides for grant of permission for establishment of educational institutions (as amended by Act No.27 of 1987) read as under:

20. Permission for establishment of educational institutions:

1. The competent authority shall, from time to time, conduct a survey as to identify the educational needs of the locality under its jurisdiction, and notify in the prescribed manner through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions;

2. In pursuance of the notification under subsection (1), any educational agency including local authority or registered body of persons intending to

   a. establish an institution imparting education;

   b. open higher classes in an institution imparting primary education; or

   c. upgrade any such institution into a high school;

   d. open new courses (certificate, diploma, degree, postgraduate degree courses, etc.,) may make an application, within such period, in such manner and to such authority as may be notified for the grant of permission therefor;

1. Any educational agency applying for permission under sub section (2) shall,

   a. before the permission is granted, satisfy the authority concerned,

      i. that there is need for providing educational facilities to the people in the locality;

      ii. that there is adequate financial provisions for continued and efficient maintenance of the institution as prescribed by the competent authority;

      iii. that the institution is proposed to be located in sanitary and healthy surroundings;

b. enclose to the application

i. title deeds relating to the site for building, playground and garden proposed to be provided;

ii. plans approved by the local authority concerned which shall conform to the rules prescribed therefor; and

iii. documents evidencing availability of the finances needed for constructing the proposed buildings; and

c. within the period specified by the authority concerned in the order granting permission:

i. appoint teaching staff qualified according to the rules made by the Government in this behalf;

ii. satisfy the other requirements laid down by this Act and the rules and orders made thereunder failing which it shall be competent for the said authority to cancel the permission.

4. On and from the commencement of the Andhra Pradesh Education (Amendment) Act, 1987 no educational institution shall be established except in accordance with the provisions of this Act and any person who contravenes the provisions of this section or who after the permission granted to him under this section having been cancelled continues to run such institution shall be punished with simple imprisonment which shall not be less than six months but which may be tend to three years and with fine which shall not be less than three thousand rupees but which may be tend to fifty thousand rupees:

Provided further that the court convicting a person under this section shall also order the closure of the institution with respect to which the offence is committed."

An analysis of the above reproduced provision of the State Act shows that the competent authority appointed by the State Government shall from time to time, conduct a survey for the purpose of identifying the educational needs of the locality under its jurisdiction. Thereafter, it shall issue notification through the local newspapers calling for applications from the educational agencies desirous of establishing educational institutions. Educational agency means any body of persons including that of religious or linguistic minority entrusted with the establishment and maintenance of a private educational institution or a minority

educational institution, as the case may be. Any educational agency applying for such permission shall satisfy the authority concerned that there is need for providing educational facilities to the people in the locality. There are some other requirements mentioned in sub-section (3) of Section 20. The same have to be fulfilled by the educational agency for applying for permission for establishing an educational institution.

The question whether the grant of NOC by the State Government is sine qua non for establishing a B.Ed. college was considered by the Supreme Court in **St. John Teachers Training Institute v. Regional Director, NCTE** (supra). In that case, it was argued on behalf of the appellant that the State Government has no role to play in the matter of establishing B.Ed. college and the Regulations framed by the Council making the requirement of obtaining NOC as a condition precedent to the establishment of B.Ed. college is ultra vires to the provisions of the Central Act. While repelling this ground of challenge, the Supreme Court noticed the scheme of the Central Act and guidelines issued by the Council for establishing B.Ed. colleges and observed:

> "A perusal of the guidelines would show that while considering an application for grant of an NOC the State Government or the Union Territory has to confine itself to the matters enumerated therein like assessed need for trained teachers, preference to such institutions which lay emphasis on preparation of teachers for subjects like Science, Mathematics, English etc. for which trained teachers are in short supply and institutions which propose to concern themselves with new and emerging specialities like computer education, use of electronic media etc. and also for speciality education for the disabled and vocational education etc. It also lays emphasis on establishment of institutions in tribal and hilly regions which find it difficult to get qualified and trained teachers and locations which have catchment area in terms of schools of different levels where student teachers can be exposed to demonstration lessons and can undertake practice teaching. Para 8 of the guidelines deals with financial resources, accommodation, library and other infrastructure of the institution, which is desirous of starting a course of training and teacher education. The guidelines clearly pertain to the matters enumerated in sub-section (3) of Section 14 of the Act which have to be taken into consideration by the Regional Committee while considering the application for granting recognition to an institution which wants to start a course for training in teacher education. The guidelines have also direct nexus to the object of the Act, namely, planned and coordinated development of teacher education system and proper maintenance of norms and standards. It cannot, therefore, be urged that the power conferred on the State Government or Union Territory, while considering an application for grant of an NOC, is an arbitrary

or unchannelled power. The State Government or the Union Territory has to necessarily confine itself to the guidelines issued by the Council while considering the application for grant of an NOC. In case the State Government does not take into consideration the relevant factors enumerated in sub-section (3) of Section 14 of the Act and the guidelines issued by the Council or takes into consideration factors which are not relevant and rejects the application for grant of an NOC, it will be open to the institution concerned to challenge the same in accordance with law. But, that by itself, cannot be a ground to hold that the Regulations which require an NOC from the State Government or the Union Territory are ultra vires or invalid."

The Supreme Court then referred to Regulation 6 of the Regulations and observed:

"In **Kunj Behari Lal Butail v. State of H.P. {(2000) 3 SCC 40}** cited by learned counsel for the appellant, it has been held that a delegated legislation must conform to the provisions of the statute under which it is framed and that it must also come within the scope and purview of the rule-making power of the authority framing the rule and in the event either of these two conditions are not fulfilled, the rule so framed would be void. As discussed earlier, the impugned Regulations do not contravene any one of the conditions inasmuch as Section 32 of the Act clearly empowers the Council to make regulations generally to carry out the provisions of the Act and thus they come within the scope and purview of the power of the authority framing the Regulations. The Regulations also conform to the provisions of the Act and are not in excess of the authority of the Council as no essential legislative function has been delegated to the State Government."

While dealing with the apprehension expressed on behalf of the appellant that the government may sit over the matter for a long period and thereby frustrate the object of establishing the educational institution in the particular area, the Supreme Court observed as under:

"There can be no manner of doubt that the State Government must take a decision on the application moved by an institution for grant of an NOC within a reasonable time. If the State Government does not take a decision within a reasonable time it will obviously defeat the right of an institution to have its application considered by the Regional Committee. It will therefore be proper that the Council frames appropriate regulations fixing the time-limit within which a decision should be taken by the State Government on the application moved by an institution for grant of an NOC. In the present cases, we are of the opinion that till such regulations are made the decision should be taken by the State Governments within four months, failing which it shall be deemed that the NOC has been granted."

I n **Govt. of A.P. v. J.B. Educational Society** (supra), the Supreme Court considered the question whether there was any conflict between Section 10 of the All India Council for Technical Education Act, 1987, which is substantially pari materia to Section 12 of the Central Act and Section 20 of the State Act. While reversing the judgment of this Court which had struck down Section 20 of the State Act, the Supreme Court traced the source of power for enactment of the two legislations, analysed the schemes of both the Acts and held:

> "It is in this background that the provisions contained in the two legislative enactments have to be scrutinised. The provisions of the AICTE Act are intended to improve technical education and the various authorities under the Act have been given exclusive responsibility to coordinate and determine the standards of higher education. It is a general power given to evaluate, harmonise and secure proper relationship to any project of national importance. Such a coordinate action in higher education with proper standard is of paramount importance to national progress. Section 20 of the A.P. Act does not in any way encroach upon the powers of the authorities under the Central Act. Section 20 says that the competent authority shall, from time to time, conduct a survey to identify the educational needs of the locality under its jurisdiction notified through the local newspapers calling for applications from the educational agencies. Section 20(3)(*a*)(*i*) says that before permission is granted, the authority concerned must be satisfied that there is need for providing educational facilities to the people in the locality. The State authorities alone can decide about the educational facilities and needs of the locality. If there are more colleges in a particular area, the State would not be justified in granting permission to one more college in that locality. Entry 25 of the Concurrent List gives power to the State Legislature to make laws regarding education, including technical education. Of course, this is subject to the provisions of Entries 63, 64, 65 and 66 of List I. Entry 66 of List I to which the legislative source is traced for the AICTE Act, deals with the general power of Parliament for coordination, determination of standards in institutions for higher education or research and scientific and technical educational institutions and Entry 65 deals with the union agencies and institutions for professional, vocational and technical training, including the training of police officers, etc. The State has certainly the legislative competence to pass the legislation in respect of education including technical education and Section 20 of the Act is intended for general welfare of the citizens of the State and also in discharge of the constitutional duty enumerated under Article 41 of the Constitution.

> The general survey in various fields of technical education contemplated under Section 10(1)(*a*) of the AICTE Act is not pertaining to the educational

needs of any particular area in a State. It is a general supervisory survey to be conducted by the AICTE Council, for example, if any IIT is to be established in a particular region, a general survey could be conducted and the Council can very much conduct a survey regarding the location of that institution and collect data of all related matters. But as regards whether a particular educational institution is to be established in a particular area in a State, the State alone would be competent to say as to where that institution should be established. Section 20 of the A.P. Act and Section 10 of the Central Act operate in different fields and we do not see any repugnancy between the two provisions."

The propositions which can be culled from the above noted judgments are:

1. State is competent to enact law for regulating the establishment of an educational institution in a particular area;

2. Section 20 of the Act does not in any way encroach upon the powers of the authorities constituted under the Central Act;

3. Before granting permission under Section 20 (3)(a)(i) of the State Act, the concerned authority must be satisfied that there is a need for providing educational facilities to the people in the locality;

4. The decision of the government to decline NOC for establishing an educational institution must be based on relevant considerations. If the government takes into consideration irrelevant factors, its decision is open to be challenged before an appropriate judicial forum.

5. The power conferred upon the State Government to take decision on the issue of need for establishing educational institution in any particular area is neither unbridled nor uncanalized and such decision, whether in the form of policy or otherwise can be scrutinized by the Court. If the Court finds that the decision is wholly arbitrary or is vitiated due to mala fides, then such a decision can be nullified.

We shall now advert to the cases in hand and decide whether the learned Single Judges committed an error by invalidating the decision taken by the State Government to cancel notification dated 1-12-2003.

The papers produced by the learned Government Pleader for Education shows that

after taking cognizance of the large number of cases filed in the Courts for sanctioning of B.Ed. colleges, the government constituted a committee for evolving guidelines to eliminate the exploitation of the students by the private managements, to provide educational facilities in backward and uncovered districts and for review of the earlier policy decisions. The committee constituted by the government submitted report dated 22-10-1997. The same was considered by the Council of Ministers and a number of policy decisions were taken. The same were circulated vide G.O.Ms.No.398 dated 4-12-1997. Paragraphs (ii), (iii) and (iv) (a) to (g) of the said G.O. read as under:

"3. …

(ii) As per the NCTE guidelines, the State Government is only vested with the power to issue a "No Objection Certificate". The need for establishment of B.Ed. Colleges/Pandit Training Institutes have to be verified and satisfied by the State Government before issuance of "No Objection Certificate".

(iii) Government hereby constitute State level standing committee (University-wise) with the following members to assess the Educational needs of the locality, receive and scrutinize the applications and for issue of 'No Objection Certificate' on behalf of State Government.

(1) Director of School Education -	Chairman and Convenor
(2) Nominee of Vice-Chancellor (Jurisdiction of respective University) -	Member
(3) J.S./D.S. of Education Department dealing with the subject of training -	Member

(iv) The Committee shall look into all the relevant aspects including the following before issue of the 'No Objection Certificate'.

a) The need should be assessed strictly District-wise and Revenue Division wise and in terms of the total children in the school going age i.e., 5 – 9, 10 – 14 years.

b) The issue of regional distribution is also to be looked into to ensure that the backward regions shall get a fair/deal. The issue of training more women teachers is also to be taken care of in order to achieve the policy of the Government in regard to reservation of Women.

c) The requirement of the number of teachers 'shall be worked out as one for

every 30 students in Primary Sections and One for ten students in Secondary Sections. This formula shall be adopted only for assessment of the number of teachers (gross) required and after assessment (gross), the total number of teachers available in Government/Local body and Private sector and also the number of candidates available in the live register of District Employment Exchange shall be taken into account for arriving the number of teachers required (net).

d) Once the need for the number of Colleges of Education in a Revenue Division / District is assessed, the Director of School Education shall invite the applications from the Registered Societies through a transparent system, by way of Newspaper notification. Applications shall be called for in December every year and the same shall be entertained by the Committee for starting the new Institutions, for succeeding academic year.

e) The Director of School Education shall give wide publicity in the locality (District/Revenue Division) calling for the applications with all required data indicating the number of Colleges likely to be permitted in the area.

f) The Committee shall satisfy the fulfillment of requirement of providing the land, corpus fund and buildings by the applicant. The requirement of the land will be 2 Hectares and shall be registered in the name of the applicant Society as owner. The corpus fund of Rs.5.00 lakhs is to be provided in addition to the other guidelines under the N.C.T.E. The corpus fund shall be deposited in National Savings Certificates/Fixed Deposits in the Post Office/Any Nationalised Bank in the Joint Account of Society and District Educational Officer. The attested copy of the Certificate/Fixed Deposit Receipt from the Post Office/Nationalised Bank is to be enclosed to the application. The major conditions of the land and corpus fund are to be fulfilled by the time of submission of applications. The applicant can proceed with the construction of the Building/Provision of infrastructure after obtaining No Objection Certificate.

g) The applicants (management) who is having experience in the field of Education (running the schools and colleges etc., with reputation) shall be given preference. The applications shall be rejected where the managements were involved in criminal or other offences.

…"

In furtherance of the aforementioned policy decision, appellant No.2 issued notification dated 26-6-2002 inviting applications for issue of NOC to start colleges of Education in the State. The application made by Kuppam Educational Society in Madanapalli Revenue Division was rejected by the State Level Standing Committee on the ground that the said Revenue Division had not been notified. After

considering the matter, the government decided to issue notification calling for applications to start B.Ed. colleges in the following places:

1) Kuppam, Chittoor District

2) Podili, Prakasam District

3) Torrur, Warangal District

4) Devarakonda, Nalgonda District

5) Utnoor, Adilabad District

6) Nizamabad Rural

Accordingly, G.O.Rt.No.635 dated 28-10-2002 was issued authorizing appellant No.2 to take necessary action. However, advertisement inviting applications for establishing B.Ed. colleges could not be issued for a long time. In the meanwhile, the then Chief Minister of the State appears to have made an announcement sometime in August 2003 that a B.Ed. college would be set up at Basara Village, Mudhole Mandal, Adilabad District. Consequently, Memo No.13518/Trg.I/2003 dated
4-11-2003 was issued by the Principal Secretary to the Government notifying Basara Village along with other areas where B.Ed. college could be established. This was followed by notification dated 1-12-2003 vide which applications were invited for establishing B.Ed. colleges in seven villages of six districts. After scrutiny of the applications and physical verification of the capabilities of the applicants to establish B.Ed. colleges, SLSC framed criteria for determination of the comparative suitability of the applicants. The same was conveyed by appellant No.2, vide his letter dated 6-1-2004 addressed to Principal Secretary to Government, Education (SE-TRG) Department. On 18-4-2004, appellant No.2 sent a reminder to the Principal Secretary to expedite orders on the criteria for taking further action in the matter of grant of NOC. At that stage, someone in the department suggested that need for more B.Ed. colleges should be reviewed in a comprehensive manner and the existing notification may be cancelled. This led to issuance of Memo dated 12-6-2004 and consequential proceedings dated 22-6-2004.

From what we have noted above, it is clear that notification dated 1-12-2003 was issued by the government because it was felt that there was need for B.Ed. colleges

in the seven villages of six districts, which appear to have been identified as backward areas. The exercise undertaken by the department to identify the areas, to evaluate the applications received in response to notification dated 1-12-2003 and determination of criteria by SLSC are sufficient to belie the assertion contained in the counter-affidavits filed in the writ petitions that notification dated 1-12-2003 was issued without assessing need for establishment of B.Ed. colleges. It has not been suggested in the counter-affidavits that any mathematical formula is to be applied for assessing the need for new colleges. Even otherwise, any such policy of mathematical precision is not expected from the administrative authorities. At times, such decisions are taken on the basis of representations made by the public representatives at the grass-root level and it is not possible to condemn such decisions by attributing political motives.

It is not in dispute that all the petitioners fulfilled the conditions specified in notification dated 1-12-2003. They submitted applications with the prescribed fee, purchased lands, deposited Rs.5 lakhs in the FDR for the purpose of creating corpus fund and took other steps for establishing B.Ed. colleges. This must have been done by the petitioners in view of an unequivocal representation made by the departmental authorities that those who fulfill the conditions laid down by the government will be considered for grant of NOCs for establishing B.Ed. colleges.

If the decision of the government to cancel notification dated 1-12-2003 is scrutinized in the backdrop of the aforementioned facts, we find ourselves in complete agreement with the learned Single Judges that the same was wholly arbitrary and unreasonable. The manner in which the government cancelled notification dated 1-12-2003 and then decided to invite applications for establishing two B.Ed. colleges in English medium in each district lends credibility to the assertion made by the writ petitioners (respondents herein) that the decision to cancel the earlier notification was taken for reasons which are not at all germane to Section 20 (3) of the State Act and guidelines issued by the Council as well as the State Government.

In view of the above discussion, we hold that the learned Single Judges did not commit any error by quashing the decision contained in Memo dated 12-6-2004 and proceedings dated 22-6-2004 and the appeals are liable to be dismissed. Ordered accordingly.

The applications of the respondents, if not processed so far, shall now be processed along with the other applications and decision on the issue of grant of NOC to the eligible applicants be taken by the competent authority within a period of 15 days from the date of receipt of a copy of this order. Such of the petitioners who may feel aggrieved by the decision to be taken hereafter by the competent authority shall be free to avail appropriate legal remedies. If the concerned authorities have already taken decision and the writ petitioners have been granted permission to open B.Ed. colleges in the identified areas, then no further action will be required to be taken in that regard.

Before parting with the case, we consider it imperative to take cognizance of the fact that during the pendency of the appeals, the Council has framed new regulations titled as “The National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2005” which were published in Government of India Gazette dated 13.1.2006. By virtue of Regulation 11 of the new regulations, the 2002 regulations have been repealed and the requirement of obtaining NOC from the State Government is now no longer necessary. Therefore, if any of the contesting respondents is desirous of setting up of a B.Ed., College, then it can directly apply to the Southern Regional Committee of NCTE for grant of recognition.

G.S. SINGHVI, CJ

R. SUBHASH REDDY, J

April 13, 2006

svs